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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

May 22, 2012

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Mary Kendall
Acting Inspector General
U.S. Department of the Interior
1849 C Street, NW – Mail Stop 4428
Washington, DC 20240

Dear Ms. Kendall:

As you know, the Committee on Natural Resources (“Committee”) has for almost two years been seeking information about how a May 27, 2010 Department of the Interior (“Department”) report entitled “Increased Safety Measures for Energy Development on the Outer Continental Shelf” (“Drilling Moratorium Report”) was drafted and then edited in a manner that misrepresented independent engineers had peer reviewed and supported the drilling moratorium when in fact they did not.

At a June 17, 2010 Committee oversight hearing, Congressman Doug Lamborn asked you whether the Office of Inspector General (“IG”), given its past investigations of scientific integrity issues, was investigating the circumstances surrounding the editing of the Drilling Moratorium Report. You responded to Congressman Lamborn’s question by stating:

“Congressman Lamborn, we have not. I understand right now that the 60-day moratorium is the issue of a lawsuit brought against the Department by industry. It has been the Office of Inspector General’s practice for as long as I have been with the office that when a matter is in another forum, such as a Federal District Court, unless there is a compelling need for us to get involved and, in this case, we have not heard from either of the parties—either the Department or the industry—we would not investigate that. I think it would be inappropriate.

I mean, I have heard all the things that you have itemized here. **I was not involved in the process of developing that report, and I think it would be inappropriate for me to comment on it.**¹ (Emphasis added).

¹ June 17, 2010 Hearing Transcript, at page 35 <<http://www.gpo.gov/fdsys/pkg/CHRG-111hrg56979/pdf/CHRG-111hrg56979.pdf>>

Congressman Lamborn followed up your response by adding: “And by the way, I didn’t want to make any suggestion that you were involved. In fact, it is good that you are not so that you can be a disinterested, objective observer because there needs to be an investigation.”

After additional questioning from Congressman Lamborn, you agreed to consider opening an investigation into the editing of the Drilling Moratorium Report. On July 20, 2010, Congressman Lamborn and I, along with five other members of this Committee, sent you a follow up letter requesting an IG investigation of the Drilling Moratorium Report. You responded by letter dated July 21, 2010 that the IG was already conducting an investigation. The IG’s November 2010 investigation report found that White House officials were involved in the editing of the Drilling Moratorium Report but was unable to independently confirm whether the edits were intentionally made to misrepresent the peer reviewers’ views on the moratorium.

It was publicly announced on April 30, 2010 that Secretary Salazar asked you, as acting Inspector General, to serve on the Outer Continental Shelf Safety Board along with Assistant Secretaries Wilma Lewis and Rhea Suh. It is unclear what role you, as a member of the Outer Continental Shelf Safety Board, would have had in developing the Drilling Moratorium Report and whether this role posed any conflicts of interest with your role as acting Inspector General overseeing investigations into the Deepwater Horizon accident and the circumstances surrounding the drafting and editing of Drilling Moratorium Report.

Documents previously obtained from your office raise significant questions about the thoroughness and independence of the IG’s investigation into the circumstances surrounding the Drilling Moratorium Report. Specifically, there are questions about whether the lead investigators were able – or directed not – to obtain all internal Department documents necessary to independently confirm witness statements and other facts at issue in the investigation, as opposed to only a select few documents provided by the same senior Department officials subject to the investigation or publicly available documents.

Now, documents more recently obtained by the Committee raise serious questions about the accuracy of your June 17, 2010 statement before this Committee that you were not involved in the process of developing the Drilling Moratorium Report.

For example, the Committee has obtained a calendar invitation for a May 25, 2010 meeting and conference call to which you were invited, along with Steve Black, Neal Kemkar, Mary Katherine Ishee, Kallie Hanley, Wilma Lewis, Rhea Suh and others. The subject of this calendar invitation is listed as: “Follow up call with NAE Peer Review Panel (30-Day Safety Report attached).” A document titled “Interim Measures Report 100525 nk Final.pdf” was attached to the invitation.

In another recently obtained document, an email chain dated May 28, 2010, you wrote to Mr. Black requesting a copy of the letter Secretary of the Interior Ken Salazar sent to the President transmitting the Drilling Moratorium Report. Your email goes on to state:

“We are launching teams next week to respond to the Secretary’s request that we determine whether specific deficiencies in [Minerals Management Service] policies or

practices exist that need to be addressed to ensure that operations on the [Outer Continental Shelf] are conducted in a safe manner protective of human life, health, and the environment. **We do not, however, want to duplicate effort that you have already made (your effort has been tremendously impressive, by the way!).**" (Emphasis added).

Mr. Black responded by saying, in part:

"And thanks for your kind words, Mary, and **for your participation in so many of the meetings and interviews leading up to this report.** I have attached the final 30-day report and the transmittal letter that went to the White House yesterday. Please don't hesitate to call me if you have any questions." (Emphasis added).

I am troubled that these documents suggest you played a significant role in developing the Drilling Moratorium Report, including participating in meetings with senior Department officials prior to the report's issuance, and commented to one of the principal authors of the Drilling Moratorium Report that that his "effort has been enormously impressive" and yet you told this Committee only a few weeks later that you were "not involved in the process of developing that report, and I think it would be inappropriate for me to comment on it."

Your apparent involvement also raises new questions about the IG's independence and impartiality in conducting the investigation of the Drilling Moratorium Report and whether it was appropriate for you to oversee this investigation in the first place or whether you should have disclosed your involvement and recused yourself from all matters concerning the investigation.

In order to better understand your role in developing the Drilling Moratorium Report, your service on the Outer Continental Shelf Safety Oversight Board, and your previous Congressional testimony, please provide no later than 12 noon on June 4, 2012, complete and unredacted copies of the following:

1. All documents that were created, sent, or received by you between April 20, 2010 to the present date concerning communications or meetings with David Hayes, Steve Black, Neal Kemkar, Mary Katherine Ishee, Kallie Hanley, Laura Davis, Reah Suh, and Wilma Lewis about the Drilling Moratorium Report;
2. All documents that were created, sent, or received by you concerning your selection to serve on the Outer Continental Shelf Safety Oversight Board;
3. All documents that were created, sent, or received by you concerning drafts of the Outer Continental Shelf Safety Oversight Board's September 1, 2010 report to Secretary Salazar; and
4. All documents that were created, sent, or received by you concerning your June 17, 2010 appearance before the Committee.

Please contact Byron R. Brown, Senior Counsel for Oversight, Office of Oversight and Investigations, with any questions regarding this request, or to make arrangements for the production of the requested material. An attachment to this letter provides additional instructions for responding to this request.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doc Hastings", written in a cursive style.

Doc Hastings
Chairman

Responding to Committee Document Requests

A. Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, recorded notes, letters, notices, confirmations, receipts, checks, envelopes, presentations, pamphlets, brochures, interoffice and intra office communications, electronic mails (e-mails), notations of any type of conversation, telephone call, voice mail, phone mail, meeting or other communication, diaries, analyses, summaries, messages, correspondence, circulars, opinions, work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and electronic, mechanical, and electric records or representations of any kind, and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, discussions, releases, personal delivery, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request. The singular includes the plural. The masculine includes the feminine.

4. As used herein, “referring” or “relating” means and includes “constituting,” “pertaining,” “evidencing,” “reflecting,” “describing,” or “having anything to do with,” and in each instance, directly or indirectly. These terms mean, without limitation, any reference or relationship which either (a) provides information with respect to the subject of the inquiry, or (b) might lead to individuals who, or documents which, might possess or contain information with respect to the subject of the inquiry.

B. Instructions

1. In complying with this document request, you are required to produce all responsive documents, materials, or items that are in your possession, custody, or control, whether held by you or your past or present agents, employees, representatives, subsidiaries, affiliates, divisions, partnerships, and departments acting on your behalf. You are also required to produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. No records, documents, data or information called for by this request

shall be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization, or individual denoted in this document request has been, or is also known by any other name than that herein denoted, the document request shall be read also to include them under that alternative identification.

3. Each document produced shall be produced in a form that renders that document capable of being printed or copied.

4. Documents produced in response to this document request shall be produced together with copies of file labels, dividers, envelopes, or identifying markers with which they were associated when this document request was served. Documents produced to this document request shall also identify to which paragraph from the document request such documents are responsive. Moreover, please include with your response, an index identifying each record and label (preferably by bates stamping) the documents. The Committee prefers, if possible, to receive all documents in electronic format.

5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses documents that are non-identical or identical copies of the same document.

6. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), state the form in which it is available and provide sufficient detail to allow the information to be copied to a readable format. If the information requested is stored in a computer, indicate whether you have an existing program that will print the records in a readable form.

7. If compliance with the document request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.

8. In the event that a document is withheld, in whole or in part, based on a claim of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter of the document; (d) the date, author, and any recipients; and (e) the relationship of the author and recipients to each other. Claims of privileges are considered under Committee on Natural Resources Rule 4(h) and, similar to all common-law privileges, are recognized only at the discretion of the Committee.

9. If any document responsive to this document request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and

recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

10. If a date or other descriptive detail set forth in this document request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

11. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.

12. Production materials should be delivered to:

Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington D.C. 20515